REMARKS

In the Office Action dated May 31, 2006, claim 26 was objected to; claims 1-12 and 15-27 were rejected under 35 U.S.C. § 103 over U.S. Patent No. 6,292,539 (Eichen); and claims 28-30 were rejected under § 103 over Eichen in view of U.S. Patent No. 6,209,108 (Pett).

Applicant acknowledges the indication that claims 13 and 14 would be allowable if rewritten in independent form.

Claim 26 has been amended to replace "adapted to" with "configured to" to address the objection raised in the Office Action. The scope of claim 26 has not been changed by this amendment.

Independent claim 2 was rejected as being obvious over Eichen alone. It is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claim 2, for at least the reason that there existed no motivation or suggestion to modify Eichen in the manner proposed by the Office Action. *See* M.P.E.P. § 2143 (8th ed., Rev. 3), at 2100-135.

The Office Action cited Fig. 5 and the accompanying text of Eichen as suggesting the subject matter of claim 2. Specifically, the cited passages of Eichen refer to a server that queries a topology database to request the length and gauge of a loop, among other information. Eichen, 5:64-6:2. The server of Eichen also requests measurement information (including measured loop length) from an electrical test system. Eichen, 6:21-26. Moreover, the cited passages of Eichen state that the server can request a load coil detection measurement to determine if there are any load coils in the loop. Eichen, 6:34-36. The length and gauge information obtained from the topology database, the measured loop length information from the electrical test system, and the load coil detection measurement information mentioned above are input to an expert system to combine the information with qualification rules to model the response of the network for various digital subscriber loop services available to the subscriber. Eichen, 6:47-60.

As correctly noted by the Office Action, although Eichen mentioned the ability to query a database to obtain a loop length and to access a measurement test system to obtain a measured loop length, Eichen clearly does not disclose calculating a data communications speed of a communications channel based on records used for high-speed access qualification, determining an actual data communications speed of the communications channel, *and* comparing the

calculated data communications speed and the actual data communications speed to determine if the records are accurate.

Nevertheless, the Office Action stated that the claimed subject matter would be obvious. 5/31/2006 Office Action at 4. To support this conclusion, the Office Action cited a passage in the background section of Eichen that refers to the fact that signal attenuation restrictions of digital subscriber loops depend upon downstream and upstream bandwidth, modulation format, and receiver sensitivity, and that signal attenuation depends on several factors, including the length and gauge of copper wire contained in the loop, and other factors. Eichen, 1:57-2:9. Applicant respectfully disagrees with the assertion that the background section of Eichen provides the suggestion to modify the technique described in Fig. 5 of Eichen to achieve the claimed subject matter. Clearly, Fig. 5 of Eichen, and its accompanying text, are focused on loop lengths (both the loop length retrieved from a topology database and a measured loop length) for the purpose of modeling a response of the network for digital subscriber loop services. However, Eichen provides absolutely no suggestion of *comparing* a calculated data communications *speed* (that is based on records used for high-speed access qualification) and actual data communications *speed* for determining if records are accurate.

Significantly, although the background section of Eichen mentions the interrelationship between signal attenuation and bandwidth and signal attenuation and the length and gauge of copper wires contained in a loop, Eichen specifically did not teach or suggest that it would be desirable to compare a calculated data communications speed based on records used for high-speed access qualification and actual data communications speed to determine if records are accurate.

Even more fundamentally, Eichen provides no suggestion of generating a value for *updating the records* in response to a difference between the calculated data communications speed and actual data communications speed. As suggesting this particular act of claim 2, the Office Action pointed to column 7, lines 5-13, of Eichen, which notes that if there is a conflict between data retrieved from a database and data measured in real-time using a measurement system or test system, that a knowledge base containing rules can be used for reconciling the differences. An example given by Eichen is that if data retrieved from a database is known not to have been updated recently, then the qualification method would rely on measured data, rather

than data from the database. However, there exists absolutely no suggestion in this passage of Eichen, or anywhere else in Eichen, of generating a value for *updating* the records *in response to the difference between the calculated data communications speed and actual data communications speed.*

In view of the foregoing, it is clear that no motivation or suggestion existed to modify the teachings of Eichen to achieve the claimed subject matter. Therefore, a *prima facie* case of obviousness has not been established with respect to claim 2.

Independent claim 17 was also rejected over Eichen alone. Claim 17 recites an article that comprises at least one storage medium containing instructions that when executed cause one or more systems to access records pertaining to characteristics of a communications channel, determine variance between a predicted data communications speed of the communications channel based on the records and an actual data communications speed of the communications channel, and update the records based on the determined variance.

Similar to the arguments presented above with respect to claim 2, Eichen clearly does not suggest determining variance between a predicted data communications *speed* of a communications channel based on records pertaining to characteristics of a communications channel and an actual data communications *speed* of the communications channel. Moreover, it is clear that Eichen does not suggest updating records based on the determined variance. A *prima facie* case of obviousness has also not been established with respect to claim 17.

Also, with respect to independent claim 26, Eichen does not suggest a controller being configured to compare an estimated *bandwidth* (calculated based on records pertaining to characteristics of a communications channel) with an actual *bandwidth* of the communications channel, *and* to update the records to reduce a variance between the calculated bandwidth and the estimated bandwidth in response to the comparing. Thus, a *prima facie* case of obviousness has also not been established with respect to claim 26.

Dependent claims are allowable for at least the same reasons as corresponding independent claims. In view of the allowability of base claims over Eichen, it is respectfully submitted that the obviousness rejection of claims 28-30 over Eichen and Pett has also been overcome. Moreover, newly added dependent claims 31, 32, 33 and 34 contain similarly subject matter as claims 13 and 14, which were indicated by the Office Action as being allowable.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRC.0015US).

Respectfully submitted,

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